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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR 29 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Tariff Filing Requirements for
Nondominant Common Carriers

CC Docket No. 93-36

COMMENTS OF THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL

The American Public Communications Council ("APCC") submits the following comments on the Commission's Notice of Proposed Rulemaking in this matter, FCC 93-103, released February 19, 1993.

STATEMENT OF INTEREST

APCC is a council of the North American Telecommunications Association, and is made up of more than 200 competitive providers of pay telephone and public communications equipment, services, and facilities. APCC seeks to promote competitive markets and high

owner is identifiably acting as "the carrier" for the service provided.

APCC's primary interest in this rulemaking is to minimize the burden of tariff filing requirements on its members. While some independent payphone providers operate several thousand payphones, most have fewer phones. Many APCC members operate less than 100 payphones each. Especially for these smaller companies, requirements to file tariffs, including the payment of filing fees each time a tariff is revised, impose a substantial burden.

DISCUSSION

I. OPERATOR SERVICES

The Commission also requests comment on its tentative conclusion that the rule changes proposed in this notice should not apply to the provision of operator services by nondominant carriers. The Commission states:

Nondominant carriers providing operator services were not previously subject to permissive detariffing. Rather, these carriers are required to file informational tariffs for their operator services pursuant to Section 226(h) of the Communications Act.

Notice, ¶ 20.

APCC does not believe this statement is entirely correct

with that requirement is sufficient to bring operator service providers into compliance with Section 203 of the Act, to the extent that the latter section applies to operator services.

APCC agrees with the Commission's implicit suggestion, in the language quoted above, that compliance with the informational tariff requirement should be sufficient, and that non-dominant operator service providers should not be required to file both ordinary tariffs and informational tariffs. There is, in fact, very little difference between the existing requirements for filing informational tariffs and those proposed by the FCC in this rulemaking for the filing of ordinary non-dominant carrier tariffs.^{1/} However, given that the Court of Appeals has overruled a longstanding Commission policy on which the entire industry has relied for years, APCC is concerned about the possibility, however remote, that a federal court might not view informational tariffs as equivalent to or an adequate substitute for ordinary Section 203 tariffs. In addition, the Commission is authorized to waive the informational tariff requirement after October 17, 1994. 47 U.S.C. § 226(h)(1)(B). If the Commission does waive the requirement at that time, then -- absent further changes in the law -- operator service providers who are common carriers will remain subject to

^{1/} The primary differences of which APCC is aware are that (1) informational tariffs can be filed on the day that they take effect instead of one day's notice, and (2) informational tariffs must contain certain specific information, not all of which would necessarily be included in a Section 203 tariff. For example, informational tariffs must contain "reasonable estimates of the amount of traffic priced at each rate, with respect to calls for which operator services are provided." 47 U.S.C. § 226(h)(1).

the Section 203 tariff filing obligation, and will have to file Section 203 tariffs pursuant to whatever filing requirements are applicable.

Therefore, the Commission should provide in this rulemaking that operator service providers, if they choose, may file ordinary Section 203 tariffs under the same rules applicable to other non-dominant carriers.

In order to minimize paperwork and filing fees for non-dominant carriers, the Commission should also rule that, if a non-dominant operator service provider files an ordinary Section 203 tariff which includes all the information required for an informational tariff, then that single tariff filing satisfies both the Section 203 tariff requirement and the informational tariff requirement. Alternatively, the Commission should clarify that the simultaneous filing of a new or revised Section 203 tariff and a new or revised informational tariff covering the same service does not subject the filing carrier to more than one filing fee.

II. NOTICE REQUIREMENT

APCC supports the Commission's proposal to allow non-dominant

carriers to file tariffs effective on any date within 30 days

III. MAXIMUM RATES AND RANGES

APCC supports the Commission's proposal to allow non-dominant carriers to file either a maximum rate or a range of rates. This proposal is critical to ensuring that tariff filing requirements do not become hopelessly burdensome, expensive, and unmanageable for very small carriers such as the members of APCC. While a dominant carrier has sufficient revenues to easily absorb the administrative costs of frequent tariff revisions, for a small carrier these costs can be extremely high in relation to total revenues.

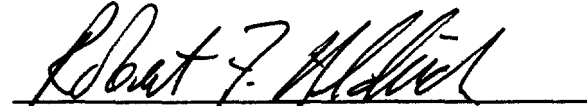
IV. FORM OF TARIFFS

APCC supports the proposed changes that increase the flexibility of non-dominant carriers to file tariffs in the form most convenient for them. As the Commission notes, the need for a standard format does not exist in the case of non-dominant carriers because there will be little occasion for the Commission to review non-dominant tariff filings.

CONCLUSION

APCC supports the Commission's proposals and urges their adoption with the modifications described above.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Robert F. Aldrich", is written over a horizontal line.

Albert H. Kramer
Robert F. Aldrich

KECK, MAHIN & CATE
1201 New York Avenue, N.W.
Penthouse Suite
Washington, D.C. 20005-3919
(202) 789-3400

Attorneys for American Public
Communications Council

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